

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

GREGORY EUGENE MUSE §
v. § CIVIL ACTION NO. 6:08cv8
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Gregory Muse, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Muse says that he was convicted of attempted murder in the 7th Judicial District Court of Smith County, Texas, on November 17, 1988, receiving a sentence of 95 years in prison. His direct appeal of this conviction was affirmed on March 27, 1990, and Muse did not seek discretionary review. Instead, he sought habeas corpus relief on January 4, 1991, which was denied on June 5, 1991, and then a second state petition on August 21, 2007, which was denied on November 7, 2007. His federal petition complained about the legality of the fact that a grand jury commissioner appointed himself to serve on the grand jury which handed down his indictment. He noted that his brother Aaron Muse had questioned Judge Coats, the trial judge, about this procedure before Muse's trial had concluded, but that Judge Coats had stated that the practice was lawful even though it apparently was not.

After review of the pleadings, the Magistrate Judge issued a Report on January 22, 2008, recommending that the petition be dismissed. The Magistrate Judge determined that the

petition was successive because Muse had previously filed a federal habeas corpus petition challenging a disciplinary case, and the facts underlying the present case were known to him at that time; that his petition was barred by the statute of limitations; and that his petition lacked merit because his complaint was solely a matter of state law and did not implicate any rights protected by the Constitution of the United States. The Magistrate Judge recommended that the petition be dismissed with prejudice as barred by limitations and lacking in merit, and that Muse be denied a certificate of appealability *sua sponte*.

Muse received a copy of this Report on January 23, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice as barred by limitations and lacking in merit. It is further

ORDERED that the Petitioner Gregory Muse is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 5th day of March, 2008.



A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**